

Comments from employers

Comments from labor

WAC 192-210-100 Referral Union Program—Purpose—Requirements of participating unions. (1) RCW 50.20.010(3) requires that individuals receiving unemployment benefits be actively seeking work pursuant to customary trade practices. They must also be able to work and available for work. In some trades, labor unions act as referral agents for their members to job opportunities in that labor market. The referral union program is a means for participating unions to monitor the job search and availability requirements of unemployed members of the union, and to transmit that information to the department. Membership in a participating union can replace all or part of an individual job search, subject to the approval of the department.

There is absolutely no procedure for the union to monitor the job search and availability requirements of unemployed members. ESD does not provide the structure to accomplish such a monitoring program.

What does “monitor” require of union? Just return forms sent by ESD?

What kind of info and how often does it need to be transmitted to satisfy the union’s responsibility to “monitor”?

(2) A union approved by the department for participation in the union referral program may be designated as either a full or qualified referral union.

(a) A full referral union is one where:

(i) The union’s constitution, bylaws, or working rules prohibit its members from seeking work in the industry on their own; or

Do the union’s dispatch rules fill this “working rules” requirement?

If union can’t find job for a person, may give letter to that person saying look for work on your own—does this jeopardize it’s status as a full referral union? What is cutoff point for union to lose full referral status in this situation—10 individuals, 15?

(ii) The union has a labor market saturation rate of fifty-one percent or more. Saturation rate is determined by multiplying the percentage of industry jobs under contract with the union by the percentage of the union’s active members placed by referral.

“Saturation rate” is confusing. Union’s share of jobs can fluctuate dramatically and is beyond control of union.

“Market share”?

No reliable relationship between market share and effectiveness of dispatch process.

What are “active members placed by referral”?

How can dept. require union to have 51% saturation rate if only 10% of workers are union members?

Recommend eliminating this formula.

Wording in rule is better than that on application.

How does dept. monitor saturation rate? Unless its monitored or verified, no point in having it in here.

Can be subject to challenge by employers. Fluctuates, and information can conflict.

Does this apply to organizing drives or “salting program”.

Keep things simple; rather than looking at saturation rate, just look at union requirements. % of market share doesn’t matter.

Surveys on periodic basis—won’t meet rate during certain times of year, e.g. in winter.

Need to look at pay rate; unions may not have high percentage of jobs but they have majority of good paying jobs.

(Teamsters) In determining this, do they include everyone with CDL?

Isn’t “saturation” intended to say that if union has less than 51% of market, members are limiting their job search?

Non union members can register with the union; is this illegal?

Section 4801.01 of UIPM conflicts with draft rules.

Please define saturation rate. How does ESD determine percentage of jobs under union contract, in fact, how does anyone do so? Is ESD referring to residential remodel, home building, tenant improvement, new commercial, industrial, etc. What criteria?

Unions do not have contracts, contractors do. Some jobs have both union and non-union people on the job.

What is meant by “union’s active members placed by referral”? Some members take 15 calls a year—do you count that person once or 15 times when determining this percentage.

What studies have been/will be done to determine the reliability of statistics gathered? Will findings be published? How frequently will they be updated?

How will “active members” be defined for these purposes?

“Union density” is a better term.

Remove saturation language.

What’s to prevent union saying they have 100%? May create another layer of bureaucracy.

Don’t know how many non-union jobs are out there.

Why ask if dept. doesn’t monitor on regular basis?

Can’t base formula on union density. Look at number of members vs. number of union jobs.

Who decides the saturation rate?

How is “market saturation” calculated, who is responsible for doing the calculation, how often do they have to be done, and what are the reporting rules?

Their union (Sprinkler Fitters) allows members to seek work on their own, but 70% of jobs in area are union jobs—want to keep some version of “market share” or “saturation rate” to prevent them being downgraded to qualified union status.

Definition shouldn’t be too general; the department should make any determination that is necessary, not union or employer.

(b) A qualified referral union is one that:

(i) Has a labor market saturation of fifty percent or less; and

(ii) Its constitution, bylaws, or working rules permit members to solicit work in the covered industry.

May be able to look for other types of work but lose union benefits.

Their union allows members to solicit work in the covered industry, but only from union contractors.

Add “signatory contractors”.

“seeking work outside of union contract or signatory contract”

(c) Unions with a labor market saturation of less than ten percent may not participate in the referral union program unless their constitution or bylaws prohibit members from seeking work in the covered industry on their own.

(3) To participate in the referral union program, the union must enter into a signed agreement which ensures the union will promote the employment prospects of its members and:

What does “promote” employment prospects mean? “maintain” ?

“Promote” is fine.

Apply to new unions only.

How does signing an agreement “ensure” anything? ESD does not even provide any procedures for oversight—nor does it appear ESD cares about ensuring integrity.

There are no sanctions for unions who do not comply with program requirements.

What will signed agreement look like? Would like to review before finalized.

What are the terms of the agreement and the definition of terms. Why are the unions required to sign any kind of agreement?

When entering into agreement, union should attest to the information they provide.

(a) Certify to the department whether an individual is in good standing, eligible for bid, dispatch, or referral, and in compliance with union rules;

Unions should only have to return notices when person not in good standing, etc.

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Eligibility for dispatch is different than registration for work. Set guidelines for compliance with union rules. Dept. should set minimum uniform standards for what those rules have to include.

State agency has no business telling unions how to operate. Shouldn't be so prescriptive as to say when and at what intervals people have to sign in.

What does "eligible for bid" mean?

What does "eligible for bid" mean? Does member have to be present in the hiring hall every day to be eligible?

Where did the term "bid" come from? It was never part of these discussions before.

This is moving way beyond the needs & responsibilities of UI. One job is available, one person is dispatched, others are eligible for UI. Dept. shouldn't be concerned over who or why individual selected for dispatch.

(b) Advise its members that failure to be available for work or refusal of dispatch or referral may affect the individual's eligibility for unemployment benefits and will be reported to the department; and

Dept. should provide unions with sign or poster to notify members about requirements.

What assurance does ESD have that unions "advise" their members—where are the sanctions?

How does a union "advise its members"? Verbal or in writing? How often?

What is definition of "refusal of dispatch or referral"?

What if the employer refuses to hire the person? Will the dept. monitor or audit employers who refuse to hire some members but challenge others' UI?

(c) Provide the department with such information as is requested to determine whether an individual is available for work and actively seeking work.

"Disclose" information may be better.

Will ESD call the union when they report person is not in good standing, suspended?

What systematic efforts to ensure that union eligibility determination is, first, in compliance with union rules and accurate, and second, consistent with goals of the department?

How many staff will be devoted to auditing unions to ensure accuracy of information?

Will the data be published?

Given that union records are being used for a public purpose, will the union records be available to the public? If not, why not?

Will the info provided by the union to the dept. re whether an individual is available/actively seeking work be available to the public or at least the interested employer as a public record. If not, why not?

Was any consideration given to requiring the full referral union to provide info about eligibility of members for bid/dispatch/referral both to ESD and the interested employer? Why not?

How is employer supposed to knowingly respond if it does not receive info?

Was consideration given to requiring union officers to certify under oath the info provided to ESD about members? Why not?

Doesn't ESD have any concern about inaccurate info in light of the abuses that have been reported?

Since unions acting in place of department, they should be required to do what the agency would do as far as verifying availability, etc.

(4) The union must promptly notify the department of any changes in its address, telephone number, or business agent, or significant changes in its referral or dispatch requirements.

Use "dispatcher".

Use "business manager"

Use "principal officer"

Use "designated contact person"

Use "designated union official"

Use "appropriate agent"

Use "principals officers"

What constitutes "significant changes"?

Eliminate significant changes clause entirely.

Their union doesn't turn people in if they've registered with another local.

Why does dept. care if union changes its dispatch process?

This is not done today and has not been complied with for years at (one local), nor does ESD do anything about it.

Don't need name of individual person, just title of person who should be the contact.

(5) The department will periodically require unions to renew their membership in the referral union program.

No objections to this section.

Unions change their methods of dispatch; need to notify department when changed.

Still a referral union no matter how referral or dispatch is made; shouldn't matter.

How does a union periodically renew its membership in the program?

Why require renewal if nothing has changed? Is this a program to set up the unions to fail tis rule by missing an arbitrary timeline, so as to take away their referral status?

(6) Participation in the referral union program may be revoked by the department for failure to comply with the terms of the agreement.

List grounds for revocation.

Give 30 days notice, better safeguards.

Is there an appeal process?

How long does revocation last? Just until they comply?

Does this apply if the union makes an error, fails to respond, etc?

If membership in program revoked, is union liable under any other law? Is there other liability?

Should apply only to intentional violation of rules.

What about job separations? No requirement for unions to advise department.

What "agreement" is ESD referring to?

Has any union's participation ever been revoked by the dept.?

Has the dept. ever investigated any union's participation in the referral union program?

Was consideration given to assessing the union a penalty equal to the improperly obtained benefits when benefits are improperly obtained by union members due to inaccurate info provided by the union or other fraudulent activity by the union to encourage abuse of the system? If not, why not?

Eliminate this section. There should be a penalty for the individual involved, but not revocation of entire union status.

On what grounds can participation be revoked? Will union receive notice and opportunity to be heard in an official hearing? What if a union makes a mistake in reporting? Will they be allowed to correct it?

What are the terms of this unique "agreement" only referral unions must sign? Are they doable, realistic, relevant, and understandable?

(7) A union that elects to withdraw from the referral union program must provide the department with 30 days notice in order to allow the department time to notify claimants who are members of that union of their revised job search requirements.

Delete (6) and (7).

WAC 192-210-110 Members of referral unions. (1) Your membership in a participating full referral union will be generally accepted as meeting the job search requirements of RCW 50.20.010(3). This means that you are not required to make an independent search for work if you meet the requirements of WAC 192-210-120.

“As long as you are following union rules for dispatch”

Explain what criteria is used to determine full or qualified status.

How is one above to meet the job search requirements of RCW 50.20.010(3) by simply being a member of a full referral union?

(2) Your membership in a participating qualified referral union satisfies one of the job search contacts required by RCW 50.20.240. You must make two additional employer contacts each week or participate in an approved job search activity at the local WorkSource Office.

Locals are divided into districts. Can members contact other districts/unions to meet their job search requirements?

Can they use the same contacts each week as long as they are constantly in compliance with the dispatch rules for all three of these unions at all times?

(3) “Membership” in a referral union applies to journeymen, apprentices, members in travel status as authorized by union guidelines, and members in good standing while paying reduced fees for economic reasons.

Add residential trainees, low voltage installers

Use “qualified by union for full referral status”

Those paying reduced fees for other than economic reasons. First level are not yet apprentices (first card or utility cards). Others aren’t yet members (permit members). Have same dispatch and referral requirements but not enough hours to qualify for membership.

(4) You are not required to violate your union rules to establish eligibility for unemployment benefits.

But they are being required to go way beyond the union rules to establish/maintain eligibility.

(5) The department may remove you from the referral union program when participation does not enhance your employment prospects or for other good cause.

Change to “failing to actively pursue work” or something similar.

Could be read to say if unemployed at some time . . . Ambiguous.

Has ESD ever, again ever, removed a person from the referral union program when participation does not enhance one’s employment prospects?

Has dept. ever made any effort to determine whether a union’s rules actually promote the seeking of work?

What types of circumstances would cause the dept. to remove the member from the referral union program? For example, will the dept. make any effort to determine whether members have unlimited rights to avoid responding to calls for open positions?

Should just deny UI claim rather than remove individual from program.

What does “enhance your employment prospects” mean? Is it dept’s intent to penalize people who just have hard time getting/keeping a job?

Section is vague—what are grounds for removing someone from participation. Will that person have an opportunity for an impartial hearing?

If person is removed from program, is still bound by union membership rules. Barred from seeking work outside the referral process. What types of job contacts outside the industry will ESD accept?

What does this section mean? If there are very few union jobs available, but lots of non-union jobs, does membership in a union “not enhance your employment prospects”?

(6) The provisions of this section do not apply if you are receiving regular shareable or extended benefits. See WAC 192-240-030.

Does signing up with other unions qualify as employer contacts for EB purposes?

(7) The department will periodically request verification that you remain a member in good standing with your union and you are available for bid, dispatch, or referral.

Monthly is too often; maybe every 6-8 weeks.

Change “will” to “may”. This will cause huge amounts of paperwork for dept. & unions.

Travel to office may be difficult for workers in remote locations.

Some locals cover the entire state and members only call in; hard to get signature.

This causes extra hoops for workers/unions to jump through. The initial certification is sufficient.

Claimant certifies when he files; verification is just busywork. Extra pieces of paper to stamp—doesn’t see the need.

Appears union members being held to higher standard than other claimants. This would require 100% verification of union population rather than random sampling of non-union members (job search monitoring program).

Members should be held to different standard because membership (and exclusion from job search monitoring) is a privilege.

Covered by weekly certification. It is an expense to have member drive in to union office when located many miles away.

There needs to be a method of reporting that the person is not meeting check-in requirements.

Too much cost/paperwork for state. Initial check with union is enough. Expense for state in doing this.

Person may be in good standing first month of claim, but change later. Not totally opposed to this process but don’t want it to be burdensome.

Send notice directly to the unions.

Send notice to union member.

Get all names on one list and send to local at once. If send to member and he’s not telling the truth in the first place, he’s going to lie on form.

WAC 192-210-120 Requirements of referral union members. (1) You will be considered a member of a referral union if you are in good standing with the union and you:

(a) Are immediately available for bid, dispatch, or referral as required by the union; and

What is meant by “immediately” available for work? Clarify or delete.

(Local) requires members to be available the next day. Other unions have 48 hour rule.

What about members on standby?

(b) Have no unreasonable limitations or restrictions on your availability for work.

What are unreasonable limitations on availability? What are reasonable limitations?

(2) In addition, during any week for which you claim benefits you must report to the department if:

(a) You are not available for bid, dispatch or referral during any week for which you claim benefits; or

“You are unavailable for work during any week for which you claim benefits.”

(b) You refuse referral or dispatch during any week for which you claim benefits.

Likes this one—refuse offer of work.

How about any time one refuses dispatch, is not available or refuses work. Why in a week?

Clarify difference between availability and work refusal. If referred by dispatcher and refuse, is that a work refusal or an availability issue?

Here we are finally back to the original intent, a logical test, and the issue that UI should be worrying about, the refusal of a valid offer of employment.

(3) Refusal to bid or of dispatch or referral by your union raises a question about your availability for work and eligibility for unemployment benefits. While some union rules allow refusal of dispatch without penalty, such refusals may not be allowed for unemployment insurance purposes. For example, your union may permit you to refuse jobs at non-smoking locations, but this is an unreasonable restriction on your availability for work.

Work on “refuse to bid” language. If only one job available, and only one person can bid and get it, why challenge eligibility of all others who may not have bid, as long as the job is filled?

“Refusal to bid” isn’t applicable.

Need to consider skills and abilities required by job. Why bid on job not qualified for?

Electricians need to meet licensing requirements. No point in allowing unlicensed person to bid on job when employer can’t hire him. Union/management agreement may not require contract but state law does.

Employer has right to reject that applicant. Member can still meet union dispatch requirements because not all jobs require licenses (federal jobs, jobs on tribal lands).

Restricting availability if only seeking work in occupation that requires state license and you don’t have a license.

How is “refusal to bid or of dispatch or referral” defined? Doesn’t failure to define these terms lead to deferral to whatever union rules are adopted? In light of fact that union has an interest in making it easy for employees to obtain benefits, how can such a deferral be justified?

What refusals would be allowed as consistent with UI purposes? What refusals are not consistent?

Can members refuse referral if an employer requires a drug test?

What does “refusal to bid” mean?

Don’t want members to be playing the system—there should be penalties for person not complying.

Records are kept on union members that aren’t kept on other claimants; they may actually be more subject to denial than others.

Refusal of short calls—what is denial period?

Define “refusal to bid”. What about being present in the hall 3x a week? 2x a week?

(4) You will be presumed to have met the availability and job search requirements of RCW 50.20.010 when you file a weekly claim certifying that you are able to work, available for work, and actively seeking work. A cause for doubting this presumption will be created if an employer

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provides relevant information for a specific week regarding your eligibility for benefits, as provided in WAC 192-12-320. This may include, but is not limited to, information that less senior union members were referred or dispatched and that jobs submitted to the union went unfilled during a week in which you received unemployment benefits.

More descriptive information; “significant proportion of jobs” going unfilled.

What about short call jobs? How to gain certainty on impact of this?

Eliminate example from rule.

Why isn't the presumption the other way around—the presumption is that you are not available for work and actively seeking work unless proven by providing info available to both the employer and ESD?

End this section after “192-12-320”. Employers may send letter telling union not to refer a person. Or the individual may not want to work for a bad employer.

Some employers have no hire list and union may not know what it is. Job unfilled because employer rejected applications referred by union.

Whose job is it to keep records of why job unfilled?

What is definition of “less senior member”?

What are legitimate reasons for declining a job or transfer.

Is the union responsible if a member lies or provides false info to the dept?

General comments/questions

Referral system is best system we have for putting people back to work. May need tweaking somewhat but doesn't need significant changes. Don't put more burdens on the system.

Can dept. waive waiting week for apprentices in training? (A: No)

Have rules been shared with DOL?

Do employers have to provide the names on their "do not hire" lists? They don't terminate the workers for cause, just lay them off.

Need nuisance clause for employer associations who repeatedly send in challenges to individuals' eligibility that are found to be without merit.

Do away with these rules; dept. can come out and review their out of work list.

If dept. doesn't have staff/mechanisms to enforce rules, why are we going through this process?

Problem is between one trade and one union. Leave the rest of them out of it.

What if local union chooses to implement policies that violate state law?

ESD should talk to a labor attorney who deals with collective bargaining agreements.

What recourse does state have for investigating nuisance challenges to claimants' eligibility filed by employers? Can dept recover costs of investigating, responding, etc.?

Union members & contractors are putting more money into the economy, yet are subject to greater scrutiny.

Dept. should look at federal hiring hall requirements to make sure rules are consistent.

Need a definition section in rules to eliminate some confusion.

Rules will impose major record keeping and reporting burden on unions.

Rules are vague and do not provide guidance to unions or members.

ESD should withdraw the proposed rules and engage in negotiated rule-making.

Is there a need for rules for participating employers? They must follow "referral rules" for unions they are signatory to.

Are there any conflicts with these rules and federal rights granted to unions by DOL?

Do the employers have to inform the unions of members on UI "standby" to allow the union to satisfy their "monitor" requirements?

This is not a reaction to an industry wide problem, but instead an attempt to revise a whole system to address the perceived issues of one employer association. The system as it is now structured has worked fine for years and years without any complaints from the employers.